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Original Minutes of the Governor General and Council of Fort William in Bengal

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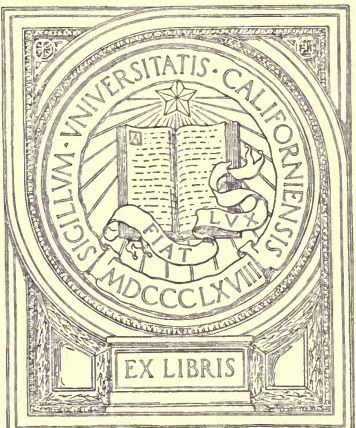

ORIGINAL MINUTES

OF THE

GOVERNOR GENERAL AND COUNCIL

OF

FORT WILLIAM

IN

BENGAL,

ON THE APPOINTMENT, RECOMMENDED AND CARRIED BY MR. HASTINGS, IN OCTOBER, 1780,

OF SIR ELIJAH IMPEY,

TO BE JUDGE OF THE SUDDER DUAUNY ADAWLET,

With a Salary of Five Thousand Six Hundred Sicca Rupees a Month, or, Seven Thousand Seven Hundred and Ninety-five Pounds Four Shillings *per Annum*.

LONDON:

Printed for J. DEBRETT (Successor to Mr. Almon) opposite Burlington House, Piccadilly. 1781.

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MEMORANDUM.

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AS it does not appear, that the committee of the honourable houſe of commons, when they cloſed their laſt report on the adminiſtration of juſtice in Bengal, had ſeen the lateſt and moſt material part of the proceedings of the governor general and council on that ſubject, their report of courſe is ſo far defective. To ſupply that defect, and to compleat the information already given to the public, the following minutes are now publiſhed, and for no other purpoſe. The Eaſt India company and the nation ſhould alſo be apprized of the following facts.

Jambori

1ſt.

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1ſt. That Sir Eyre Coote did not deliver his opinion *firſt* on Mr. Haſtings's propoſition, as is uſual with the youngeſt member of the council, but *after* he had carefully peruſed and conſidered the minutes of the other gentlemen.

2dly. That on the 24th, of October, 1780, Sir Elijah Impey, formally accepted of the office of judge of the Sudder Duauny Adawlet, by a letter addreſſed to the board.

3dly. That, on the ſame day, Mr. Haſtings recommended an allowance of five thouſand ſix hundred Sicca rupees a month, for Sir Elijah Impey, which, reckoning the current rupee at two ſhillings, as it is uſually rated in Bengal, is equal to ſeven thouſand, ſeven hundred, ninety five pounds, four ſhillings a year. But, as that queſtion could not be carried againſt Mr. Wheler, and Mr. Francis, without the aſſiſtance of Sir Eyre Coote, who had left Calcutta, the deciſion of it, at the governor general's deſire, was poſtponed.

The

The following extracts from the act of parliament, and his majesty's charter of justice, are inserted in this place, as a proper and necessary introduction of the subject.

Clause in the regulation bill of the 13th, of his present majesty's reign.

" And that all such salaries to such go-
" vernor general and council, and of such
" chief justice and judges shall be in lieu
" of all fees of office, perquisites, emolu-
" ments and advantages, whatsoever: and
" that no fees of office, perquisites, emo-
" luments, or advantages whatsoever shall
" be accepted, received, or taken, by such
" governor general and council, or by such
" chief justice and judges, as aforesaid,
" or any of them in any manner, or
" on any account or pretence whatsoever,
" other than such salaries and allowances,
" as are in and by this act, directed to be
" paid to them respectively.

Extract

Extract from the Charter of Juſtice, granted by His Majeſty, the 26th, Day of March, 1774.

" THE court of directors of the ſaid united company ſhall, and they are " hereby required to direct, and cauſe to be " paid, certain and eſtabliſhed ſalaries, to " the ſaid chief juſtice, and each of the " judges of ſuch ſupreme court of judicature, " at Fort William in Bengal, as ſhall be by " the ſaid new charter eſtabliſhed, that is to " ſay, to the chief juſtice, eight thouſand " pounds by the year, and to each of the " judges of the ſaid ſupreme court of judica- " ture, at Fort William in Bengal, ſix thou- " ſand pounds by the year, and that ſuch " ſalaries ſhall be paid, and payable to each " and every of them reſpectively, for the " time being, out of the ſaid territorial acqui- " ſitions, in the kingdoms of Bengal, Bahar,

" and

" and Oriſſa ; ſuch ſalaries to take place and
" commence, in reſpect of all ſuch perſons,
" who ſhall be reſident in Great Britain at the
" time of their appointment, from the day
" on which ſuch perſons ſhall embark from
" Great Britain; *and ſuch ſalaries to be in lieu*
" *of all fees of office, perquiſites, emoluments,*
" *and advantages whatſoever*, as by the ſaid
" act may more plainly and largely appear.

AUTHENTIC

AUTHENTIC COPY

OF THE

PROCEEDINGS, &c.

Revenue Department. 29th Sept. 1780.

GOVERNOR GENERAL,

THE inſtitution of the new courts of Dewannee Adawlut has already given occaſion to very troubleſome and alarming competitions between them and the provincial councils, and to much waſte of time at this board. Theſe, however, manifeſt the neceſſity of giving a more than ordinary attention to theſe courts in the infancy of their eſtabliſhment, that they may neither prevent the purpoſes nor exceed the limits of their juriſdiction, nor ſuffer encroachments upon it.

To effect theſe points would require ſuch a laborious and almoſt unremitted application, that, however urgent or important they may appear, I ſhould dread to bring them before the conſultation of the board, unleſs I could propoſe ſome expedient for that end, that ſhould not add to the weight of buſineſs with which it is already overcharged.

That which I have to offer, will I hope prove rather a dimunition of it.

By the conſtitution of the Dewannee courts, they are all made amenable to a ſuperior court called the Sudder Dewannee Adawlut, which has been commonly but erroneouſly underſtood to be ſimply a court of appeals—it's province is and neceſſarily muſt be much more extenſive. It is not only to receive appeals from the decrees of the inferior courts in all cauſes exceeding a certain amount, but to receive and reviſe all the proceedings of the inferior courts; to attend to their conduct; to remedy their defects, and generally to form ſuch new regulations and checks as experience ſhall prove to be neceſſary to the purpoſes of their inſtitution.

Hitherto the board has reſerved this office to itſelf, but hath not yet entered in the execution of it, nor, I will venture to pronounce, will it ever with effect, though half of it's time were devoted to this ſingle department.

Yet without both the ſupport and controul of ſome powerful authority held over them, it is impoſſible for the courts to ſubſiſt, but they muſt either ſink into contempt, or be perverted into the inſtruments of oppreſſion.

This

This authority I repeat the board is incapable of exerciſing, and if delegated to any body of men, or to any individual agent, not poſſeſſing in themſelves ſome weight independent of mere official power, it will prove little more effectual. The only mode which I can deviſe to ſubſtitute for it, is included in the following motions, which I now ſubmit, on the reaſons premiſed, to the conſideration of the board.

That the chief juſtice be requeſted to accept of the charge and ſuperintendency of the office of Sudder Dewannee Adawlut under it's preſent regulations, and ſuch other as the board ſhall think proper to add to them, or to ſubſtitute in their ſtead, and that on his acceptance of it, he be appointed to it, and ſtiled the judge of the Sudder Dewannee Adawlut.

I ſhall beg leave to add a few words in ſupport of this propoſition on different grounds.

I am well aware that the choice which I have made for ſo important an office, and one which will minutely and narrowly overlook every rank of the civil ſervice, will ſubject me to much popular prejudice, as it's real tendency will be miſunderſtood by many, miſrepreſented by more, and perhaps dreaded by a few. I ſhall patiently

ſubmit to this conſequence, becauſe I am conſcious of the rectitude of my intentions, and certain that the event will juſtify me, and prove in that whatever light it may be ſuperficially received, I ſhall be found to have ſtudied the true intereſt of the ſervice, and contributed the moſt effectually to its credit.

The want of legal powers except ſuch as are implied in very doubtful conſtructions of the act of parliament, and the hazards to which the ſuperiors of the Dewanny courts are expoſed in their own perſons, from the exerciſe of their functions, has been the principal cauſe of their remiſsneſs, and equally of the diſregard which has been in many inſtances ſhewn to their authority. They will be enabled to act with confidence, nor will any man dare to conteſt their right of acting when their proceedings are held under the ſanction and immediate patronage of the firſt member of the ſupreme court, and with his participation in the inſtances of ſuch as are brought in appeal before him, and regulated by his inſtructions. They very much require an inſtructor, and no one will doubt the ſuperior qualifications of the chief juſtice for ſuch a duty.

It will be a means of leſſening the diſtance between the board and the ſupreme court, which has

has perhaps been, more than the undefined powers aſſumed to each, the cauſe of the want of that accommodating temper, which ought to have influenced their intercourſe with each other. The conteſts in which we have been unfortunately engaged with the court bore at one time ſo alarming a tendency, that I believe every member of the board foreboded the moſt dangerous conſequences to the peace and reſources of this government from them. They are at preſent compoſed, but we cannot be certain that the calm will laſt beyond the actual vacation, ſince the ſame grounds and materials of diſunion ſubſiſt; and the revival of it at a time like this added to our other troubles might, if carried to extremities, prove fatal.

The propoſition which I have ſubmitted to the board, may, nor have I a doubt that it will, prove an inſtrument of conciliation with the court, and it will preclude the neceſſity of its aſſuming a juriſdiction over perſons exempted by our conſtruction of the act of parliament from it. It will facilitate and give vigour to the courſe of juſtice; it will leſſen the cares of the board and add to their leiſure for occupations more urgent and better ſuited to the genius and principles of government: nor will it be any acceſſion

acceſſion of power to the court, where that portion of authority which is propoſed to be given, is given only to a ſingle man of the court, and may be revoked whenever the board ſhall think it proper to reſume it.

Revenue Department, October, 1780.

Mr. WHELER.

NO one can be more ſincerely deſirous than I am of the due adminiſtration of juſtice in this country. By the late act of parliament, this branch is divided between the ſupreme court and the government: what the act hath not committed to the former, it confirms to the latter; and wherever the extent of the reſpective juriſdictions is not clearly defined, or is oppoſitely viewed, there mutual candour and regard to the publick good ſhould influence. Through theſe channels only can juſtice flow here.

This board, in the late inſtitution of Dewannee courts of Adawlut, hath thought itſelf acting within the province left to it by the legiſlature; and making an effective regulation for the benefit

benefit of the country. I am ſorry to find from the govenor general's minute, that he now ſees the inſtitution in a different light in both theſe reſpects. He conceives that " the ſuperiors of " the Adawlets have no legal powers, except " ſuch as are *implied* in very doubtful conſtruc- " tions of the act of parliament " and that the court of appeals eſtabliſhed to controul their proceedings, and ſupport their authority, can never prove effectual for theſe purpoſes. If the inſtitution has really theſe evils in it, I am willing to deliberate upon proper remedies for them; to reduce it if it has exceeded the due limit, or if it is found to be eſſentially defective, to agree to an eſſential change in it. But at preſent I muſt confeſs theſe poſitions are not evident to me, and ſuppoſing them to be eſtabliſhed, in the application of remedies, we can have no ſtandard but the lines marked out by the act of parliament, which aſſigns a ſeparate juriſdiction to each of the two departments, or implies the duty of a co-operation of both.

Altho' I entertain all due deference for the chief juſtice, and feel myſelf embarraſſed by the perſonality which mixes in the queſtion before us, yet I muſt beg leave to ſay, that the expedient propoſed by the governor general ſeems not to fall in with any of the intentions of the act, but

but to be oppoſed by difficulties, as well as to threaten conſequences, which unleſs obviated muſt determine me to withhold my aſſent to it.

Some of the preſent difficulties are theſe.—Firſt. If the governor general and council have no other legal power to appoint ſuperintendants of the Adawlet than what is *implied* from a *doubtful conſtruction* of the act of parliament, then they ſhould not have proceeded to an eſtabliſhment of ſuch importance, nor ſhould they now perſiſt in it, their buſineſs in ſuch caſe is to act in concert with the court.

2dly. If they have not in themſelves competent power for this eſtabliſhment, then in like manner they are not competent to confer upon any individual that authority, with which it is now propoſed to inveſt the perſon of the chief juſtice.

3dly. Unleſs the chief juſtice acknowledges the validity of the board's inſtitution (which will be a great authority againſt the governor general's argument) he cannot conſiſtently accept of the office propoſed for him. And the ſame remark may be extended to the opinions of the other judges. His acceptance of an office cannot eſtabliſh the legality of the power that confers it.

4thly,

4thly, The union of different powers in the perſon of the chief juſtice can be no regular conciliation of the two departments.—The interpoſition of his perſon may indeed prevent their claſhing for a time, but this effects no real adjuſtment of principles between them. And it does not ſeem allowable for us to conclude that a particular diſtinction ſhewn to the chief juſtice will ſuppreſs all oppoſition of ſentiment from the other judges, nor does this mode of procuring peace, if it ſhould ſucceed, appear the moſt honourable or ſafe for ourſelves; for, after delegating ſo much power, both departments are ſtill left expoſed, at the pleaſure of the chief juſtice, to the future eruption of their unextinguiſhed differences.

5thly, If for the purpoſes of conciliating the court, and giving efficacy to the Adawluts, ſuch an authority is to be beſtowed, it would ſeem that theſe purpoſes would be better anſwered, and all danger of infringing the act of parliament avoided, by delegating the power of hearing appeals to all the judges of the ſupreme court, or aſſociating them with ourſelves, and holding ſuch power in conjunction with them, which falls in with one part of the bill tranſmitted to the court of directors in the year 1776.

6thly, By an appointment of this nature, the independency of both departments may be endangered. By ſeparating the members from their departments, a ſyſtem of mutual influence, which may occaſionally operate too powerfully upon each, is at once founded.

7thly, Such an union of different powers is beyond the ſcope of the act of parliament; and foreign to the conſtitution of the company's government.—A great ſalary, high rank, and conſideration are annexed to the office of chief juſtice, moſt probably upon the ſuppoſition that the perſon advanced to it, could here receive no augmentation in any of theſe things; and it ſeems inconſiſtent with his appointment from the king, which makes him independant, to accept of another appointment during the pleaſure of this board.

8thly, In the office propoſed to be given to the chief juſtice, it doth not appear how he can be held under either controul or reſponſibility. He cannot be ſeparated from the privileges of his original office; yet the exerciſe of them in all that relates to the new appointment muſt be quite diſcretionary with him.—The apprehenſions, which I entertain and have alluded to in the former part of the minute, are theſe.

Firſt,

Firſt, That it will be thought requiſite, if this appointment takes place, to annex a large ſalary to it, and an ample eſtabliſhment. In our preſent ſtate, when we can hardly raiſe money for our neceſſary occaſions, I ſhould think ſuch an expence utterly inadmiſſible.

2dly, Deciſions might probably go upon the principles of Engliſh law. The introduction of this practice ſhould, in my humble opinion, be previouſly and maturely conſidered.

3dly, If attorneys and ſolicitors ſhould be admitted to practice in the court of appeals, a new and wide door of litigation would be opened. The company have no controul over attornies and ſolicitors.

4thly, The buſineſs of the court of appeals muſt give opportunity for a thorough inſpection of all the affairs of the revenue proceedings of the provincial councils: of courſe a very powerful influence over both Europeans and natives.

5thly, Such an influence poſſeſſed by the chief juſtice of the ſupreme court might too much hide the government from the eyes of the natives.

Waving

Waving further objections, I now repeat my wish to see these obviated; and whatever may be wanting for an effectual controul over the country courts supplied.—If the service, indeed, should require an extraneous check, delicate and importent as this point is, I would by no means have it understood that I would oppose it; but before this is applied, I think several other expedients might be tried.—1st, The company's chief law officer here seems to be the person to whom recourse should first be had, his station being similar to that of the company's in England, who attends on all questions of law, and gives his opinion and advice. I think that by introducing in the same manner the advocate general into the court of appeals, the business of that court might be made easy to the members of the board: and I must think also that if such an officer, as judge of the court of appeals, should be created, *he* has the most natural right to it.

2dly, The supreme court and the governor general and council might sit together as a court of appeals according to the principles of the bill already mentioned.

3dly, The objections against the chief justice lie with less force, against either of the inferior judges:

judges: and 4thly, leaſt of all againſt the preſidence of all the judges in rotation.

Revenue Department, 3d, October, 1780.

Mr. FRANCIS,

I HAVE not had time to give to this important propoſition all the conſideration it deſerves. The reflections, which it ſuggeſts, muſt be ſtated haſtily as they occur.

That it is a freſh innovation, ſucceeding many others, in the adminiſtration of juſtice to the natives of this country, is of itſelf a weighty objection. All innovations of this nature are dangerous, eſpecially in a country, whoſe government cannot divide, or ſurrender any of its powers, without leſſening the reſpect, and hazarding the obedience of its ſubjects. On this principle, we contended for the excluſive juriſdiction of the governor general and council, as Dewan, over the Zemindars, landholders, and landed property of this country. In my judgment, the propoſition amounts to a direct contradiction, or deſertion of every thing we ſaid, or did, in the caſe of the Rajah of Coſſeejurah:

as

as ſuch it will be naturally received and underſtood by the natives. They cannot diſtinguiſh between the chief juſtice and the ſupreme courts; or if the diſtinction could poſſibly be explained to them, and if they could be ſatisfied that in fact it was not intended to reinſtate the court in the exerciſe of the juriſdiction which it had claimed, and which we had reſiſted, it is probable they would think that ſome greater evil was to befall them.

I hope it is unneceſſary for me to ſay, that no idea of perſonal diſreſpect to the chief juſtice can be intended in any thing I ſhall offer on the public queſtion before me. If any expreſſion, that may appear to have ſuch a tendency ſhould eſcape me, I diſclaim it. I mean to examine the propoſed inſtitution on its own merits, and the difficulties it may be ſubject to, as a public meaſure, without reference to the perſonal character, or qualifications of any individual. I ſhall follow the reaſoning of the governor general's minute in the order in which he has placed it.

1ſt. If the inſtitution of the new courts has already given occaſion to competitions between the provincial councils and the Duanny Adawluts, it is our buſineſs and duty to put an end

to

to them by *our* authority, which is direct and sufficiently coercive over both parties. We ought to draw the line between them, and insist on their respective submission to the limitation described by it. I do not think that, to effect this point, would require any very laborious application on our part. Our administration wants vigour, not time, to execute all its duties. One punishment would have more effect than a thousand regulations. But, if the argument were well founded, how is the difficulty removed by transferring this laborious service to the chief justice, who is already so overloaded with the business of the supreme court, that he finds it impossible to assist his brethren, as acting justices of Calcutta, and therefore is very justly excused from sharing with them in the toil of that troublesome office.

2dly, The Sudder Dewannee Adawlut I know has been commonly, but I do not think it is erroneously, understood to be simply a court of appeals. The 6th article of the plan for the administration of justice provides, *that the Dewanny Sudder Adawlut shall receive and determine appeals from the provincial Dewanny Adawluts*; and it says no more. If its province be and necessarily must be *much more extensive*, the extent of it should be accurately described and defined.

defined. For my own part, I know not where to look for this neceſſary definition; but I know that a juriſdiction, not ſo defined, either has no power at all, or it is deſpotic.—A court of appeal, as ſuch, can do nothing but receive appeals from the decrees of inferior courts: if it is to receive and reviſe *all* the proceedings of ſuch courts, it muſt itſelf ceaſe to be a court of appeal; for what ſuitor will appeal to a ſuperior court, which has already reviſed, approved, and confirmed the very proceedings by which he thinks himſelf injured. If a court of appeal adheres to the true principle of its inſtitution, it ſhould know nothing of the proceedings of the inferior court, until an appeal from the decree of that court comes regularly before it. If it has already approved of the proceedings below, it is *inſtanter* a party, and cannot be judge. As to the other duties propoſed "of attending "to their conduct, of remedying their defects, "and forming new regulations, &c." theſe are objects for the legiſlative power of the country, which I underſtand, *quo ad hoc* at leaſt, is excluſively and unalienably veſted in the governor general and council.

3dly, I am of opinion that the office might be exerciſed by the board, or by any two members of it, and that two or three ſpecific days, allowed

allotted in a month to this duty, would be sufficient to perform it.

4thly, I must object to the request proposed to be made to the chief justice, for the following reasons :—The governor general and council cannot, without departing from the principles on which they have unanimously acted, establish the Sudder Adawlet on any plan, which commits the company's rights, or ours, in quality of Duan of the provinces, to the custody of all, or any of the judges.—The supreme court and council differ widely in their ideas of the jurisdiction of the court. The chief justice cannot be supposed to have changed the opinions which he has at all times so steadily maintained; and those opinions would lead him to submit to the jurisdiction of the court in many instances, in which the council, upon *their* principles, would resist them. Thus the council, by making the chief justice judge of the Sudder Dewannee Adawlut, would put it into the power of the very man, with whom they have been contending, to give up what they have hitherto insisted on as their essential rights.

The great object of this plan is to give authority to the Dewannee Adawluts; but I cannot admit that the means are likely to answer

the end.—The arguments drawn from the elevated ſtation of the chief juſtice have no weight. He can carry none of the powers of the ſupreme court into the Sudder Adawlut.—When he acts under the appointment of the council as ſuperintendant, he will poſſeſs no part of the authority which he derives from the king's appointment of chief juſtice.—It will not prove an inſtrument of conciliation, nor prevent the reviſal of diſputes, which it is ſaid might prove fatal. It is admitted by the governor that the grounds of diſunion ſtill ſubſiſt; and it is certain that the appointment of the chief juſtice to the Sudder Adawlut will make no alteration in the authority and powers of the ſupreme court. The remaining judges will have the ſame powers that they all now poſſeſs, becauſe the council cannot, by new modelling the Adawluts, abridge, or in any way affect the powers of the court.—If the chief juſtice carries his late opinions into the Sudder Adawlut, the ſupreme court will obtain ſtrength from this appointment: if he acts on new principles more conformable to thoſe of the council, that will raiſe freſh difficulties.—It will tend to make a breach between him and the other judges, but can never repair the breach already ſubſiſting between the court and council. I uſe the language which has already been applied by us to the

the judges, when I ſay that *there is a jealouſy, which all men feel for their own power and conſequence.* The two puiſné judges cannot but feel themſelves wounded by this partial ſelection of the chief juſtice, and the preference given to his ſuperior qualifications. We ought not to offer them ſuch cauſe of offence, nor ought we to be careleſs of the effects it may produce.—I conceive that the appointment of the chief juſtice to this office would claſh and be inconſiſtent with the duties of his preſent ſtation. It would be an inſuperable bar to his acting in many caſes, in which his duty, as chief juſtice, would call on him to act. Suppoſe a ſuitor in the Adawlut ſhould think the judge had acted *illegally:* he might bring his action againſt him in the ſupreme court; and then, upon the principles on which the court and the chief juſtice have particularly inſiſted and acted, he would be obliged to come as a party into the court, in which he ought to preſide as chief juſtice, to plead in the uſual form, and to defend himſelf in the uſual way; and he might be compelled to pay damages for what he had done as ſuperintendant, in the ſame manner that the council of Patna were for their proceedings againſt Nauderah Begum: Thus his proceedings in the Adawlut would

bring him a party into his own court, and preclude him from acting in his capacity of chief juſtice. Again, ſuppoſe a perſon, committed by any of the inferior Adawluts, or by the chief juſtice himſelf as judge of the Sudder Adawlut, ſhould apply to him for a writ of Habeas Corpus :—Shall he refuſe the writ, becauſe the grounds of the commitment are already known to him ? Or ſhall he grant it, tho' poſſeſſed of ſuch knowledge, and where he himſelf has prejudged the queſtion, by ordering or approving the commitment ?—I cannot preſume to ſay how far it would be his duty to grant the writ at all events ; but it is evident that the priſoner would gain nothing by obtaining it.—It may be ſaid the perſon, ſo committed, may apply for a writ of habeas corpus to one of the puiſné judges. If he ſucceeds (as he certainly would, if in the opinion of the judge there ſhould be reaſon to ſuppoſe the commitment might be illegal) it would follow, that the act of the ſuperintendant would be canvaſſed, and perhaps ſet aſide by an inferior judge of another court, in which the ſuperintendant himſelf preſides. This caſe might frequently occur ; and if it ſhould *ever* occur, it would tend to create new differences between the ſupreme court on the one ſide, and the Sudder

der Dewannee Adawlut, ſupported by the chief juſtice of the ſupreme court, on the other.

On the whole, I think it would be improper in the council to requeſt the chief juſtice to take upon himſelf, and perhaps illegal in him to accept an office, which is ſo inconſiſtent with the duties of his preſent ſtation, and which would preclude him from exerciſing the truſt repoſed in him by the King in many caſes of the greateſt importance; particularly thoſe, in which the limits of the juriſdiction of the court, and the extent of the powers veſted in the council, might come in queſtion.

One of the obſervations with which the governor general concludes his argument in favor of his plan, viz. "That the portion of au-"thority, which is propoſed to be given, is "given only to a ſingle man of the court," appears to me a ſtrong objection againſt it.—The Engliſh government has very ſparingly delegated judicial authority to ſingle perſons; final *appeals* in particular are never permitted to be tried by a ſingle judge, either in England, or any of its provinces, or dependencies. The King is, I believe, the only ſingle perſon to whom ſuch an appellate juriſdiction is even nominally given; and he cannot try an appeal without

without the assistance of his privy council. Appeals to him therefore are called appeals to the *King in council*,

This policy has nothing to do with trials by jury, or principles of English liberty, which may be thought in-applicable to Bengal; but is founded on that justice to which the natives of Bengal are entitled, as well as other men. But justice requires that, in the constitution of a court, corruption be above all things guarded against; and no magistrate is more liable to corruption, than a judge in whom is vested a power of determining appeals, without being either checked by associates, or controlled by any further appeal to superior judges. The legislature, in establishing the supreme court of judicature here, though it be not a court of appeal, and though an appeal may be made from its decisions to the King in council, thought a plurality of judges necessary; and therefore created so many, that it is not likely they should be reduced by chance to one. Mr. Hastings and his council, when they erected the court of Sudder Dewannee Adawlut, would not leave such reduction in the power of chance; but made the presence of three members essentially necessary to a decision.—If I could believe it lawful and proper for us to delegate

delegate our judicial authority to judges of the ſupreme court, I ſhould think it ought rather to be given to *all* than to one.

If all the powers of the Sudder Dewannee Adawlut be veſted in one man, yet ſo veſted "that they may be revoked whenever this board "ſhall think it proper to reſume them," ſuch a judge may become in the hands of corrupt council an inſtrument of oppreſſion. The council will not be anſwerable for his decrees; and he will be in a great meaſure protected by his judicial capacity.

The authority given may undoubtedly be revoked, whenever the board ſhall think proper to reſume it. The preſent board cannot bind their ſucceſſors, nor even themſelves, againſt a change of opinion. But will the chief juſtice accept of ſuch an office on ſo precarious a footing? or would it be reſpectful in us to offer it to him, with the information, which ought to accompany it, *viz.* That he is removable at any time by a reſolution of the board.

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Revenue Department, October 8th, 1780.

Sir EYRE COOTE,

AS the determining upon points relative to law proceedings has fallen ſo little within the limits of my profeſſion, I acknowledge myſelf inadequate to the forming a thorough judgment concerning the plan propoſed by the governor general : but truſting to his full knowledge of that branch of government, which he now means to bring under the controul of inſpection, and from a real ſenſe of the abilities of the chief juſtice, to render any department of ſuperintendance, which ſhould be entruſted to his charge, no leſs uſeful and beneficial in effect, than in idea, I give my aſſent to the meaſure, obſerving at the ſame time, however, that this aſſent is for the trial of an expedient which may be attended with favorable conſequences, and not for its abſolute eſtabliſhment, and I therefore reſerve to myſelf full liberty to vote for the repeal of the preſent reſolution, ſhould I find it prove hereafter in any reſpect detrimental either to the great lines of government, or to the community.

E. C.

THE END.

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